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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Broadcast Localism	)	MB Docket No. – 04-233
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	)	
	)	
To: The Commission		

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Federal Communications Commission
Office of the Secretary

COMMENTS

AGM California, AGM-Nevada, LLC, AGM-Santa Maria, L.P., and Winton Road Broadcasting, LLC (collectively "AGM") hereby file comments in the above-referenced proceeding. *Report on Broadcast Localism and Notice of Proposed Rulemaking*, FCC 07-218 (January 24, 2008) (the "*Report*").

Background

AGM consists of companies that are privately owned by two individuals (Anthony S. Brandon and L. Rogers Brandon) and holds licenses from the Commission for thirty (30) radio stations in Arbitron Metros 70 and above as well as in unrated markets. AGM and its principals have owned and operated radio stations in smaller markets for decades in numerous states around the country, including Alabama, California, Nevada, New York, Texas and Washington.

Financial success for radio station operations – especially in smaller markets – has almost always been challenging. Part of the challenge reflects the expanding competition from the increased number of full-power radio stations authorized by the Commission

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through BC Docket 80-90 and through other proceedings. That increase in the number of radio stations has been supplemented by increased competition from other music and information sources, including the Internet, satellite radio, iPods, and more recently, low power FM radio stations.

The Commission itself has acknowledged the increased pressures on a radio station's ability to succeed – and in some cases survive – from a financial perspective. In a 1992 *Report and Order*, the Commission observed that, between 1985 and 1990, the revenue growth for radio stations had decreased to 0.2% – "one tenth the annual growth rate of the Gross National Product for the same period." *Revision of Radio Rules and Policies,* 7 FCC Rcd 2755, 2758 (1992) (subsequent history and footnote omitted). That decline in radio revenues had a corresponding impact on profit margins for radio stations, especially those in smaller markets:

> [T]he overall industry figures mask the fact that the outlook for small radio stations, which comprise the bulk of the radio industry, is particularly bleak. Industry revenue and profit are overwhelmly concentrated in large radio stations. Of almost 10,000 commercial radio stations nationwide, the top 50 revenue producing stations, .5 percent of all stations, accounted for more than 11 percent of total radio revenue in 1990 and an estimated 50 percent of total industry profit. At the same time, more than half of all stations, primarily those with less than $1 million in sales, lost money.

7 FCC Rcd at 2760 (footnote omitted). The poor financial performance reflected in the foregoing statistics not only undermined the investments of those who owned radio stations; that performance also led the Commission to "conclude that radio's ability to serve the public interest in the spirit of the Communications Act is substantially threatened." *Id.*

To be sure, the radio industry's financial performance has seen improvement in some years since that *Report and Order* was issued in 1992. However, the financial prospects for radio today are not much different than they were in 1992. Numerous parameters reflect radio's declining financial performance: revenue growth over the last five (5) years has been lower than the annual rate of inflation;[1] the stocks of the public radio companies have experienced significant declines;[2] and industry observers are forecasting that revenue growth for the radio industry in 2008 could be a negative number while advertising on the Internet continues its upward trend.[3]

Against this depressed (and perhaps depressing) financial composite, two (2) of the Commission's proposals in the above-referenced docket appear to be ill-conceived and counterproductive to the Commission's professed interest in fostering radio programming that will better serve the public interest: the proposal to require every radio station owner to have a Community Advisory Board (a "CAB"); and the proposal to require every radio station owner to maintain a main studio in the community of license of every station owned by that broadcaster.

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[1] *RBR.com* (January 14, 2008) ("terrestrial radio revenue adjusted for inflation has not grown over the last five years"); *RBR.com* (April 8, 2008) (BIA Reports "that radio station revenues were down 2.3 percent in 2007" and that BIA "expects 2008 to be worse than '07, with radio revenues projected to fall 3.1 percent").

[2] One periodical made the following observation: "The decline in adverting revenue in nearly all major markets has continued unabated as listeners abandon the format for prerecorded music and commercial-free satellite radio . . . . Investors have shifted money from the sector, leaving all major broadcaster stocks down by double-digits in the past year." *Business News* (April 17, 2008). Another industry source stated the following before disclosure of first quarter earnings in 2008: "As the radio industry heads into the thick of its earnings releases over the next week or so, the market seems to already be predicting 2008 will be a pretty awful year for the sector . . . For the past 3 months, core radio advertising spending has shown significant erosion with continued year over year drops." J.P. Hannan, "Radio Earnings: Bleak Forecast and Contrarian Plays," *Seeking Alpha-com* (February 26, 2008). *RBR* subsequently reported that its radio index (reflecting the stock prices for all public radio companies) had decreased 10.87 percent in the first quarter of 2008 while the Dow Jones Industrial Average fell only 7.67 percent. *RBR.com* (April 17, 2008).

[3] *See supra* at footnote 1; *RBR.com* (January 14, 2008) ("in 2008 Internet revenue is projected to surpass radio revenue for the first time"); "Will Internet Kill the Radio Star" *eMarketer* (August 20, 2007) (with tables showing increase in Internet advertising in comparison to radio advertising).

I. Creation of Community Advisory Boards

The Commission tentatively concluded "that each licensee should convene a permanent advisory board made up of officials and other leaders from the service area of its broadcast station." *Report* at ¶26. The Commission expressed its expectation that the CAB would include "representatives of all community elements," and, to achieve that goal, proposed that the CABs "be made up of leaders of various segments of the community, including underserved groups." *Report* at ¶44.

In advancing the foregoing proposal, the Commission recognized that some broadcasters may have had already created community advisory boards of some kind. Accordingly, the Commission stated that, "generally speaking, if a licensee already has formal groups in place with which it consults to determine the needs of its community, it should be deemed to have satisfied this requirement [for creation of a CAB]." *Report* at ¶43.

There is, to begin with, no substantial evidentiary basis for the Commission's proposal to require every radio station owner to create a CAB. That alone is a fatal defect. *E.g. AT&T Corp. v. FCC*, 86 F.3d 242, 247 (D.C. Cir. 1996) ("we must set aside a Commission order if the record lacks 'substantial evidence' to support its conclusion"). To be sure, the Commission heard criticism from a sampling of individuals and groups about the state of communication between the public and certain radio stations (as well as certain television stations). *See Report* at ¶¶7-9. But that anecdotal evidence is hardly sufficient to constitute an indictment of the communications between every (or even most) radio station owners and the public they serve.

This void in the evidentiary record has particular applicability for owners like AGM who operate in smaller markets. Radio stations in smaller markets cannot succeed – or even survive – without a high level of communication and interaction with the public they serve. Unlike radio stations in the larger markets, radio stations in smaller markets secure little advertising from national advertisers (like Budweiser or Proctor & Gamble) and place an overwhelming reliance on advertisements from local establishments. *See* Declaration of L. Rogers Brandon annexed hereto. If the radio station is not serving its community and retaining listeners, it will be unlikely to secure needed advertising from those local establishments.

The concept of broad-based community advisory boards may have some utility for noncommercial radio stations funded by public tax dollars (including those receiving assistance from the Corporation for Public Broadcasting). The requirement has little applicability to the operation of commercial radio stations in today's fragmented market.

That fragmentation is a direct result of the Commission's deregulation of radio in 1981. *Deregulation of Radio*, 84 FCC2d 968 (1981). In eliminating ascertainment procedures, repealing programming processing guidelines, and otherwise relaxing the rules that govern radio, the Commission acknowledged that "localism has been, and continues to be, an important element of service in the public interest" but that "the concept of well-balanced programming has not held such a continuing and elevated status." 84 FCC2d at 997. The Commission therefore wanted to provide – and did provide – each radio licensee with the discretion to direct its public interest programming "primarily to the more specialized interests of its own listenership" without having to provide service "to all segments of the community . . . " *Id.* To say now, as the

Commission does, that the CAB would have to include representation from "all" segments of the community is to turn the clock back to an environment which no longer exists (if it ever did) where every radio station has to provide service to all segments of the community.

Problems would persist even if the Commission were to give a radio station owner the discretion to adapt representation on its CAB to the particular listenership it serves. Indeed, it would be an administrative nightmare to try to craft regulations that would provide meaningful guidance to radio broadcasters in deciding who to include on a CAB and in managing its affairs. More specifically, the Commission would have to decide (1) how many members the CAB should have, (2) how to determine whether there is appropriate representation for appropriate segments of the community, (3) whether the CAB has met with sufficient frequency, and (4) whether meetings of the CAB are of sufficient duration. Nowhere does the *Report and Order* address those practical obstacles to any effective enforcement.

The same practical problems attend to the Commission's proposal to excuse those radio broadcasters who already have in place a "formal" community advisory board. It would be extremely difficult, if not impossible, to craft reasonable guidelines to determine when a community advisory board should be deemed to be a "formal" one that qualifies the broadcaster for exemption. Resolution of that issue would still leave open the same logistical issues that confront any CAB created pursuant to a Commission rule: namely, whether the "formal" board has sufficient members representing "all" or appropriate segments of the community; whether the "formal" board meets with sufficient frequency and duration to satisfy the Commission's ultimate goal of increasing communication between the radio station and the community; and whether the "formal" community advisory board has a sufficient number of participants.

The foregoing legal and administrative issues underscore the logic of the present system. Each radio broadcaster should retain the discretion to form community advisory boards if it so desires. But radio broadcasters should also be allowed to rely instead on existing civic, business, and political organizations in the communities they serve. Unlike self-chosen CAB members, those organizations will have the incentive and the knowledge to provide whatever information and advice the radio broadcaster may desire.

Radio broadcasters – already confronted by decreased profit margins and increased pressure on the ability to provide responsive programming – should not be saddled with another regulatory hurdle to remedy problems that, for all the record shows, affect only relatively small number of stations.

II. Establishment of a Main Studio in Every Community of License

The Commission proposes to turn the clock back on main studios as well and reinstate a rule that disappeared in 1987. *Report* at ¶41. As in the case of the CAB proposal, there is no substantial evidence in the record to support the proposal to require a main studio for every community of license. Nowhere, for example, did the *Report* explain with any precision how the establishment of a main studio in the community of license for every radio station will address whatever anecdotal complaints the Commission has received with respect to the performance of some radio stations. The proposal is based instead upon an assumption that by, becoming a "'part of the neighborhood,'" the presence of the main studio in the community of license will somehow minimize the number of complaints that some listeners have about particular radio stations in their communities. *Report* at ¶41.

The absence of substantial evidence to support the proposal is, in and of itself, enough to require its rejection. *See AT&T v, FCC, supra.* The absence of any demonstrated factual nexus is compounded by the Commission's failure to acknowledge, let only reconcile, its proposal with the rationale which led the Commission to relax the main studio rule in 1987 and again in 1998. *See e.g. Greater Boston Television Corp. v. FCC,* 444 F.2d 841, 852 (D.C. Cir. 1970) ("an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute").

The main studio rule was relaxed for two basic reasons. First, the Commission concluded that the public no longer needed have the main studio located in the community of license because "the role of the main studio in the production of programming had diminished over the years, . . . community residents often communicate with stations by telephone or mail rather than visiting the studio, and . . . the growth of modern highways and mass transit systems had reduced travel times." *Review of the Commission's Rules regarding the Main Studio*, 13 FCC Rcd 15691, 15693 (1998). Second, the Commission concluded that "the revised rule would allow broadcasters to obtain certain efficiencies, such as co-locating a station's studio at its transmitter site or moving the studio to lower cost areas." *Id.*

Those perceived efficiencies loomed larger after the passage of the Telecommunications Act of 1996, P.L. 104-104, which increased the number of radio stations a party could own and operate in a particular market. As the Commission explained in its 1998 decision to allow the main studio to be located within 25 miles of the community's reference point or anywhere within the city grade signal, "[W]e sought comment on ways to lessen the burdens on licensees, particularly those owning multiple stations, by giving them greater flexibility in locating their main studios." *Id.* The Commission determined that expanding the area in which a main studio could be located "should allow many more multi-station licensees to combine the resources of their jointly-owned stations, which can allow them to better serve the public." 13 FCC Rcd at 15694.

Radio owners in many markets – including those in smaller markets where AGM operates – have taken advantage of those efficiencies, and they have provided many stations – again, especially those in smaller markets – with additional resources to provide more and better programming responsive to the needs and interests of their listenership. To require radio broadcasters now to establish a main studio for every radio station's community of license would require the expenditure of untold resources with (as far as the record shows) no corresponding public benefit. Instead, the forced expenditure of additional monies for those additional main studios will divert limited resources from programming.

AGM's situation is illustrative. The AGM companies operate radio stations in five (5) markets: Albuquerque, New Mexico (Arbitron Metro 70); Bakersfield, California (Arbitron Metro 78); the Four Corners markets in Farmington, New Mexico, Durango, Colorado, and Cordez, Colorado (unrated); San Luis Obispo, California (Arbitron Metro 172); and Santa Maria, California (Arbitron Metro 207). Compliance with the Commission's proposal would require the AGM companies to establish at least five (5) new main studios at an approximate annual cost of $500,000. *See* Declaration of L. Rogers Brandon annexed hereto. Stated another way, the AGM companies would have to expend approximately $2.5 million over the next five (5) years to comply with the Commission's new rule. As explained in the attached Declaration of L. Rogers Brandon, the AGM companies' president, that expenditure would necessarily require the AGM companies to reduce the amount of news and other non-entertainment programming made available to their listeners.

Consolidation has become a buzzword for those who want to decry a perceived diminution of service by certain stations in certain markets. But that easy tagline should not cloud the reality that will confront most radio owners like AGM who will find themselves unable to provide desired programming because of the substantial increase in operating costs from the increased number of main studios they are required to maintain. In short, the Commission's main studio proposal will probably produce the very opposite result which the proposal is designed to serve.

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Conclusion

WHEREFORE, in view of the foregoing and entire record herein, it is respectfully requested that the Commission not adopt any rule or policy that (1) would require every radio station operator to establish a Community Advisory Board and (2) would require every radio broadcaster to establish a main studio in every station's community of license.

Respectively submitted,

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By: ______________________
Lewis J. Paper

DECLARATION

L. Rogers Brandon hereby declares as follows:

1 I am the President of four (4) companies (collectively, the "AGM Companies") which share ultimate common ownership: AGM California, a California general partnership; AGM-Nevada, LLC, a Maryland limited liability company; Winton Broadcasting Co., LLC, a Maryland limited liability company; and AGM Santa Maria, L P , a California limited partnership. My offices are located in Bakersfield, California.

2 I have reviewed the Comments to be filed by the AGM Companies in the Federal Communications Commission's docket on Broadcast Localism, and all statements of fact relating to the AGM Companies in those Comments are accurate.

3. All of the AGM Companies' stations rely primarily on advertising from local establishments. All the percentages vary from year to year, the level of national advertising business for the stations never exceeds 20 percent and is usually much lower than that

4 Special attention should also be given to the expected costs to the AGM Companies if the Commission were to adopt its proposal to require every radio station to establish a main studio in its community of license. Although there are numerous variables which can affect costs at any particular time, I estimate that adoption of the Commission's proposal would probably require the AGM Companies to establish five (5) new main studios at a cost of approximately $500,000 each year, or $2.5 million over the next five (5) years. That additional expenditure would reflect expenditures for property acquisition or rent, equipment, furniture and fixtures, personal property tax, utilities, insurance, maintenance, security, staffing and logistical support.

5 The foregoing expenditures for additional main studios would not be offset by any increase in advertising revenues As a result, AGM would be forced to reduce expenditures in other areas, including, if not especially, programming (because that would be the only significant variable over which the AGM Companies have control)

6 The increased number of main studios to be operated by the AGM Companies would not appear to have any public benefit We try to maintain lines of communication with the listeners we serve, and we have received very few communications from listeners over the years who complained about the lack of access to our main studios

7 We have also received very few communications from listeners who complained about our station's failure to maintain communication with the relevant segments of our listenership

I hereby declare under penalty of perjury that the foregoing is true and correct

L. Rogers Brandon

4-28-2008

Date